XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 156/2005

APPELLANT (IN JAIL) — Awadh Gupta, s/o Ganpat Gupta, age 47 years, Occupation-Agriculture, r/o Village Nawanagar, P.S. Darima, District Surguja, CG

VERSUS

Respondent — The State of Chhattisgarh, Through P.S. Darima, Distt. – Surguja (C.G.)

Present:
Shri A.K. Prasad, Advocate for the appellant.
Shri Neeraj Mehta, Panel Lawyer for the State.

ORAL JUDGMENT
(17th November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 4th January 2005 passed in S.T.No.352/04 whereby learned Vth Additional Sessions Judge (FTC), Ambikapur has convicted the appellant under Section 304-I of IPC and sentenced him to undergo RI for five years, pay a fine of Rs.1000 and in default of payment of fine to undergo additional RI for one year.

2. Case of the prosecution, in brief, is that on 17.7.2004 wife of the complainant deceased Kunti was proceedings towards the field with food for her husband when she saw that the appellant was beating his son. She stopped the appellant,

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whereupon the appellant in a fit of anger assaulted the deceased on her head and other parts of the body with club resulting in her instantaneous death.

3. Merg intimation Ex.P/3 was given by Babunath (PW-1), husband of the deceased. He also lodged First Information Report on the same date at about 16.40 hours in Police Station Darima vide Ex.P/1. Inquest over the dead body of Kuntibai was prepared in the presence of witnesses vide Ex.P/12. Her body was sent for postmortem examination to Govt. Hospital, Ambikapur where Dr. A.K. Jaiswal (PW-7) conducted postmortem and prepared the report Ex.P/9.

4. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur under Section 302 of the IPC and the same was received on transfer for trial by the learned Additional Sessions Judge.

5. During trial the prosecution examined 9 witnesses in all. Thereafter, statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties acquitted the appellant from the charge under Section 302 of the IPC and instead convicted him under Section 304-I of the IPC and sentenced as mentioned in paragraph one of this judgment.

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6. Learned counsel for the appellant submits that even according to the case of the prosecution the incident occurred on the spur of moment due to sudden provocation without premeditation as the deceased questioned the appellant as to why he was beating his son, which infuriated him and he assaulted the deceased with a club on her waist, as a result of which she fell down and died on the spot. The prosecution witnesses have categorically stated before the Court that single assault was made by the appellant to the deceased on her waist and there is no allegation that the appellant assaulted the deceased on her head. Thus, from the evidence available on record and the circumstances under which the offence is alleged to have taken place neither intention nor knowledge can be attributed to the appellant of causing death of Kuntibai. So far as injuries found in the postmortem report over head of the deceased are concerned, the same could be sustained by her due to fall on the ground.

7. On the other hand, learned counsel appearing for the State/respondent supported impugned judgment of the trial Court.

8. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

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	9. Conviction of the appellant is based on the statements of PW-5 Vinay Kumar Gupta and PW-8 Krishna Prasad Gupta, son of the appellant. Conviction is also based on the statement of Dr. A.K. Jaiswal (PW-7), who conducted postmortem on the body of deceased and proved the postmortem report of Ex.P/9. 10. PW-5 Vinay Kumar Gupta, has stated that on the date of incident at about 11.30 in the morning he saw that the accused was assaulting a lady. He saw him assaulting on her waist, however, he went to his home out of fear. Later on he learnt that the lady has died. After assaulting the accused was waving the club, therefore, out of fear he fled from the scene of occurrence. In the cross-examination this witness has stuck to his claim made in his examination-in-chief and stated that the accused was chasing his son for beating. However, he had saved the child and even his son Krishna had stopped the accused, whereupon he had assaulted Krishna also with club. At that time the lady stopped him, on which he assaulted her with club. PW-8 Krishna Prasad Gupta (PW-8), son of the appellant, has also deposed in the similar lines and stated that when deceased Kuntibai asked the accused as to why he was beating the child, the appellant gave one lathi blow to Kuntibai saying "who is she to intervene". In the cross-examination also this witness has stuck to his claim.	

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11. PW-7 Dr. A.K. Jaiswal , who conducted postmortem, has stated that he found contusion of size 5 x 1 cm just behind the neck, two contusions on the left scapula region extending up to neck of size 10 cm x 1 cm and 8 cm x 1 cm, respectively. There was an abrasion also of size 1 cm x 1 cm. He also noticed one contusion beside the left eye. On internal examination he found that vertebra bone of the neck, 6th cervical vertebra were fractured and there was a big haematoma. There was blood clotting under the brain membrane and brain, 2nd and 3rd ribs of the left side were fractured, blood was present in both sides of the chest and both the chambers of heart were empty. There was a large blood clotting on the backside of the neck. He also noticed contusion over lungs and haematoma over left lung. He has opined that cause of death was due to combined effect of shock and neurogenic shock as a result of excessive bleeding out of the head injury and further stated that the injuries could be caused by the club seized from the appellant, which was sent to him for examination.

12. After going through the statements of PW-5 Vinay Kumar Gupta and PW-8 Krishna Prasad Gupta, involvements of the appellant in crime in question is established. From the evidence available on record no intention can be attributed to the appellant for causing injuries to the deceased. However, after considering the nature of injuries sustained by the deceased, it cannot be said that the appellant did not have

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knowledge that the injuries caused by him could result in death of Kuntibai. Therefore, considering the evidence available on record and particularly, the medical evidence, I am of the opinion that the trial Court has rightly convicted the appellant under Section 304-I of the IPC.

13. Learned counsel for the appellant argued that taking into consideration the totality of the circumstances and further considering the fact that the incident occurred on the spur of moment on a sudden provocation without premeditation, the jail sentence of eight years' RI imposed upon the appellant is too excessive and the same should be suitably reduced.

14. Considering the overall evidence available on record and further considering the circumstances in which this unfortunate incident occurred, this Court is of the opinion that ends of justice would be served if while maintaining conviction of the appellant under Section 304-I of the IPC, the jail sentence of eight years' R.I. imposed upon him by the trial Court is reduced to five years.

15. In the result, appeal is partly allowed. Conviction of the appellant under Section 304-I of IPC is maintained. However, jail sentence of eight years' R.I. imposed upon the appellant is modified and in place thereof, he is sentenced to undergo RI for five years and pay a fine of Rs. 1000/-, in default of payment of fine to undergo additional RI for one year.

Sd/-
Dhirendra Mishra
Judge

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